

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY 16 2016

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

(1) LANCE W. HIGHTOWER and  
(2) SUE I. HIGHTOWER,

Plaintiffs,

v.

(1) USAA CASUALTY INSURANCE  
CO. and  
(2) THOMAS A. FULTON, Independent  
Appraiser,

Defendants.

**16 CV - 274 JED - FHM**  
Case No. \_\_\_\_\_

*Removed from the District Court of  
Tulsa County, State of Oklahoma,  
Case No. CJ-2016-01412*

**NOTICE OF REMOVAL**

Defendant USAA Casualty Insurance Company ("USAA CIC"), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes the above-captioned action pending in the District Court of Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. The grounds for removal are as follows:

1. Plaintiffs commenced this action entitled *Lance W. Hightower and Sue I. Hightower v. USAA Casualty Insurance Co. and Thomas A. Fulton, Independent Appraiser*, CJ-2016-1412 (the "Action"), by filing a Petition with the District Court of Tulsa County, State of Oklahoma, on April 12, 2016. *See* Ex. 1, Pet. An Amended Petition [hereinafter, the "Amended Complaint"] was filed by Plaintiffs on April 25, 2016. *See* Ex. 2, Am. Compl.

2. The Amended Complaint purports to state claims against USAA CIC for bad faith (Count I), breach of contract (Count II), and intentional infliction of emotional distress (Count III), and a claim against Defendant Thomas Fulton for negligence (Count IV).

3. The original Petition in the Action is attached as Exhibit 1. The Amended Complaint is attached as Exhibit 2. The Summons served on USAA CIC is attached as Exhibit

3. The Summons served on Fulton is attached as Exhibit 4. A copy of the Docket Sheet, Tulsa County, Case No. CJ-2016-1412, is attached as Exhibit 5. USAA CIC is unaware of the existence of any process, pleadings, or orders other than the documents included in Exhibits 1-4. Moreover, there are no motions pending before the Tulsa County District Court in this matter, nor are any hearings currently set.

4. As set forth more fully below, this case is properly removed to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 because USAA CIC has satisfied the procedural requirements for removal, and this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

**I. USAA CIC has satisfied the procedural requirements for removal.**

5. Plaintiffs served the Amended Complaint and Summons on USAA CIC by certified mail on April 29, 2016. *See* Ex. 3, USAA CIC Summons.

6. Plaintiffs served the Amended Complaint and Summons on Fulton by certified mail on April 29, 2016. *See* Ex. 4, Fulton Summons.

7. Because this Notice of Removal is being filed within 30 days of service of the Amended Complaint and Summons on both USAA CIC and Fulton, it is timely under 28 U.S.C. § 1446(b).

8. Fulton's consent is not required for removal of this action because he is not properly joined. *See* 28 § 1446(b)(2)(A) ("When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action." (emphasis added)); *Jernigan v. Ashland Oil Inc.* 989 F.2d 812, 815 (5th Cir. 1993) (per curiam).

9. Under 28 U.S.C. § 1446(a), the United States District Court for the Northern District of Oklahoma is the appropriate court for filing this Notice of Removal from the District Court of Tulsa County, Oklahoma, where the Action is pending. *See* 28 U.S.C. § 116(a).

10. Venue is proper pursuant to 28 U.S.C. §§ 1441(a) and 1391(b).

**II. Removal is proper because this Court has subject matter jurisdiction under 28 U.S.C. § 1332.**

11. This Court has original jurisdiction over the Action under the diversity of citizenship provision contained in 28 U.S.C. § 1332(a) because this is a civil action (A) where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (B) between citizens of different states. Thus, the Action may be removed to this Court by the USAA CIC pursuant to 28 U.S.C. § 1441(a).

**A. The amount in controversy requirement is satisfied.**

12. It is apparent from the face of the Amended Complaint that Plaintiffs seek recovery of an amount in excess of \$75,000, exclusive of interest and costs. *See* Ex. 2, Am. Compl., WHEREFORE clause at p. 6 (“Plaintiffs respectfully pray the Court grant judgment in favor of Plaintiffs and against Defendant[s] for the causes of action alleged herein in an amount in excess of \$75,000, exemplary and punitive damages, attorney’s fees, costs, pre and post judgment interest, and for such further relief as the Court deems just and proper.”).

13. The assertions regarding damages in the Amended Complaint are sufficient to demonstrate that the amount in controversy requirement for diversity jurisdiction has been met. *See* 28 U.S.C. § 1446(c)(2).

14. In addition, the contract at issue in this lawsuit—Plaintiffs’ homeowners’ insurance policy issued by USAA CIC, Policy No. CIC 01129 9995 93A—has a dwelling

coverage (Coverage A) with a limit of \$199,000, exceeding the amount-in-controversy requirement for diversity jurisdiction. *See* Ex. 6, Homeowners Policy Packet, at 3.

**B. Complete diversity of citizenship exists between Plaintiffs and USAA CIC—the only properly joined defendant.**

15. Plaintiffs Lance Hightower and Sue Hightower allege they are residents of Oklahoma. *See* Ex. 2, Am. Compl. ¶¶ 1-2. Residence, while not equivalent to citizenship, is *prima facie* evidence of domicile. *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Domicile is equivalent to citizenship for purposes of diversity jurisdiction. *See Smith v. Cummings*, 445 F.3d 1254, 1259-60 (10th Cir. 2006). Based on the foregoing and upon information and belief, Plaintiffs Lance Hightower and Sue Hightower are citizens of Oklahoma.

16. USAA CIC is Plaintiffs' homeowners' insurance company. *See* Ex. 6, Homeowners Policy Packet, at 3 (showing "USAA CASUALTY INSURANCE COMPANY" at the top of the page). USAA CIC is an insurance company organized under the laws of the State of Texas. *See* Ex. 7, Dishman Decl. ¶ 3; *see also* Ex. 2, Am. Compl. ¶ 5. Its principal place of business—that is, where it directs, controls, and coordinates its activities—is located in Texas. *See* Ex. 6, Homeowners Policy Packet, at 3 (indicating an address of "9800 Fredericksburg Road – San Antonio, Texas 78288"); Ex. 7, Dishman Decl. ¶ 3; Ex. 8 NAIC Consumer Information Source Search Results (showing "Home Office: TX");<sup>1</sup> *see also* Ex. 2, Am. Compl. ¶ 5. For purposes of diversity jurisdiction, USAA CIC is therefore a citizen of Texas. *See* 28 U.S.C. § 1332(c)(1).

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<sup>1</sup> "Diversity of citizenship can be demonstrated by resort to evidence outside the four corners of the complaint." *Smith v. Hillstone Rest. Grp., Inc.*, No. 13-80217-CIV, 2013 WL 2048188, at \*2 n.3 (S.D. Fla. May 14, 2013); *see also id.* at \*1 n.2 ("The Court may look beyond [the plaintiff]'s complaint to determine whether the parties are diverse.").

**C. Fulton’s citizenship should be disregarded for purposes of determining diversity jurisdiction because he is fraudulently joined.**

17. The Court should consider only the citizenship of properly joined defendants in determining whether diversity of citizenship requirements have been met. *See Smoot v. Chicago, R.I. & P.R. Co.*, 378 F.2d 879, 882 (10th Cir. 1967) (“[U]pon specific allegations of fraudulent joinder the court may pierce the pleadings, consider the entire record, and determine the basis of joinder by any means available. The joinder of a resident defendant against whom no cause of action is stated is patent sham . . . .” (internal quotations and citations omitted)); *see also Dodd v. Fawcett Publ’ns, Inc.*, 329 F.2d 82 (10th Cir. 1964) (same). “A defendant’s ‘right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy.’” *Estes v. Airco Serv., Inc.*, No. 11-CV-776-GKF-FHM, 2012 WL 1899839, at \*1 (N.D. Okla. May 24, 2012) (quoting *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).

18. Joinder is fraudulent where “(1) plaintiff’s jurisdictional allegations are fraudulent and made in bad faith; or (2) plaintiff has no possibility of recovery against the non-diverse defendant.” *Dollison v. Am. Nat’l Ins. Co.*, No. 13-CV-100-CVE-FHM, 2013 WL 1944891, at \*3 (N.D. Okla. May 9, 2013) (citing *Slover v. Equitable Variable Life Ins. Co.*, 443 F. Supp. 2d 1272, 1279 (N.D. Okla. 2006)). In this case, Fulton has been fraudulently joined because Plaintiffs have no possibility of recovery against him. Said differently, “there is no reasonable basis for the district court to predict that the plaintiff[s] might be able to recover against [the] in-state defendant,” Fulton, on the single cause of action asserted against him. *Wagoner v. Hussey Seating Co.*, No. 13-CV-352-TCK-PJC, 2013 WL 6048853, at \*2 (N.D. Okla. Nov. 14, 2013) (quoting *Cuevas v. BAC Home Loans Servicing, LP*, 648 F.3d 242, 249 (5th Cir. 2011)).

19. The only claim made against Fulton is Plaintiffs' claim of negligence. However, no such claim is allowed against Fulton under Oklahoma law.

20. Federal courts within the Tenth Circuit do not expand state law when determining whether a defendant is fraudulently joined and whether there is a reasonable basis for a state law claim against a local defendant. Thus, "[w]hen an issue of fraudulent joinder of a nondiverse defendant is raised, the Court must determine whether a cause of action is stated against the nondiverse defendant as provided by state law." *Wiley v. Safeway Stores, Inc.*, 400 F. Supp. 653, 655 (N.D. Okla. 1975) (citations omitted).

21. Here, the Oklahoma Supreme Court has expressly rejected the type of claim asserted by Plaintiffs—alleged negligence by an independent insurance adjuster.<sup>2</sup> In *Trinity Baptist Church v. Brotherhood Mutual Insurance Services, LLC*, the Oklahoma Supreme Court addressed "whether an independent insurance adjuster owes a legal duty to the insured such that [he] may be liable to the insured for negligence in its adjustment of the claim." 2014 OK 106, ¶ 1, 341 P.3d 75, 77. The answer, in accord with the majority of jurisdictions who have addressed the same question, was "no." *Id.* ¶ 1, 26 341 P.3d at 77, 84-85. Instead, to the extent an independent adjuster hired by an insurer breached a duty owed to an insured, liability for the breach fell to the insurer, not the adjuster. *See id.* ¶ 30, 341 P.3d at 86. For this reason, as well as several policy reasons detailed by the Oklahoma Supreme Court, a negligence claim against an independent adjuster arising from his work as an independent insurance adjuster simply does

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<sup>2</sup> Plaintiffs' Amended Complaint refers to Fulton as an "independent appraiser," rather than an "independent adjuster." *See, e.g.*, Ex. 2, Am. Compl. ¶¶ 4, 32. However, this distinction is one without a difference. First, Fulton actually is a licensed insurance adjuster, not an appraiser. Second, the services Plaintiffs allege Fulton provided—"evaluation services for homeowner damage claims," "inspect[ion] . . . [of] Plaintiff's home after the reported roof damage," and a determination "that the roof damage to Plaintiffs' home . . . was somehow a result of a pre-existing condition to the home"—are activities performed by independent insurance adjusters. *Id.* ¶¶ 32-33, 36.

not exist under Oklahoma law. *See id.* ¶ 31, 341 P.3d at 86; *see also Wallace v. Allstate Ins. Co.*, No. CIV-12-310-HE, 2012 WL 2060664 (W.D. Okla. June 7, 2012) (determining, *pre-Trinity Baptist*, that an independent insurance adjuster retained by an insurer would not owe any duties to an insured under Oklahoma law); *cf. Smith v. Allstate Vehicle & Prop. Ins. Co.*, No. CIV-14-18-HE, 2014 WL 1382488, at \*3-4 (W.D. Okla. Apr. 8, 2014) (finding joinder fraudulent when negligent misrepresentation/constructive fraud and breach of fiduciary duty claims were made against an insurance agent).

22. *Trinity Baptist* is dispositive as to whether Plaintiffs have a viable negligence claim against Fulton. Based on the above authorities and the allegations in the Amended Complaint, Plaintiffs have no possibility of recovery against Fulton. Fulton—an insurance adjuster who is not party to the insurance contract and is without any duty owed to the insured—cannot be held liable in negligence to Plaintiffs.

23. By including Fulton in the Amended Complaint, Plaintiffs are attempting to rely on a claim that does not exist as a matter of law in order to remain in state court by bypassing 28 U.S.C. § 1441. USAA CIC and Fulton therefore assert that this removal is proper based on fraudulent joinder principles.

24. Thus, there is complete diversity between (A) Plaintiffs, as citizens of Oklahoma, and (B) USAA CIC, which is the only properly joined defendant and is a citizen of Texas.

25. USAA CIC reserves the right to amend or supplement this Notice of Removal.

26. USAA CIC reserves all defenses, including, without limitation, those set forth in Federal Rule of Civil Procedure 12(b). USAA CIC will, pursuant to Rule 81(c)(2), file its answer and/or Rule 12(b) motion within seven days of the filing of this Notice of Removal.

27. Written notice of the filing of this Notice of Removal will be given to Plaintiffs and the state court promptly after the filing of the Notice of Removal pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, USAA CIC removes this Action to this Court under 28 U.S.C. §§ 1332, 1441, and 1446, and invokes this Court's jurisdiction.

Respectfully submitted,

 by   
s/ Jodi W. Dishman (Dustin Kitchens)

Jodi W. Dishman, OBA # 20677

Andrew J. Morris, OBA # 31658

MCAFEE & TAFT

A PROFESSIONAL CORPORATION

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E-mail: jodi.dishman@mcafeetaft.com

andrew.morris@mcafeetaft.com

*Attorneys for Defendants USAA Casualty  
Insurance Company and Thomas Fulton*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of May, 2016, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following registrants:

Raymond S. Allred  
Mbilike M. Mwafulirwa  
RICHARDSON RICHARDSON BOUDREAUX  
7447 S. Lewis Ave.  
Tulsa, OK 74136

***Attorneys for Plaintiffs***

I further certify that on this 16th day of May, 2016, I caused a file-stamped copy of the above and foregoing document to be transmitted by certified U.S. mail, postage prepaid, to the above-indicated counsel for Plaintiffs.

s/ Jodi W. Dishman  
Jodi W. Dishman



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

**FILED**

APR 12 2016

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

LANCE W. HIGHTOWER,  
SUE I. HIGHTOWER,

Plaintiffs,

v.

USAA CASUALTY INSURANCE CO.;  
AND THOMAS A. FULTON,  
Independent Appraiser,

Defendants.

**CJ-2016-01412**

*Attorney Lien Claimed  
Jury Trial Demanded*

JEFFERSON D. SELLERS

**PETITION**

COME NOW Plaintiffs Lance W. Hightower and Sue I. Hightower, (collectively "Plaintiffs"), by and through their counsel of record Richardson Richardson Boudreaux, and hereby assert their claims and causes of action against Defendants, USAA Casualty Insurance Co., and Thomas A. Fulton, (collectively "Defendants."). In furtherance thereof, Plaintiffs inform the Court as follows:

**I. PARTIES, VENUE, AND JURISDICTION**

1. Plaintiff Lance W. Hightower is a resident of Tulsa County, Tulsa, Oklahoma.
2. Plaintiff Sue I. Hightower is a resident of Tulsa County, Tulsa, Oklahoma.
3. Plaintiffs Lance W. Hightower and Sue I. Hightower are husband and wife, and for all intents and purposes, are and/or were primary policyholders with Defendant.

*[Handwritten signature]*

4. Based on information and belief, Defendant Thomas A. Fulton is an Oklahoma citizen and independent appraiser who conducts business in Tulsa County. He appraised Plaintiffs' home on behalf of USAA Insurance Co., Inc.

5. Based upon information and belief, USAA Insurance Co., Inc., ("USAA") is a property and casualty insurance company organized under the laws of the State of Texas.

6. Based upon information and belief, USAA offers, sells, and provides insurance related services and products in the State of Oklahoma.

7. Subject matter jurisdiction is proper in the district courts of the State of Oklahoma pursuant to Okla. Const. art. 7, §7 (granting district courts of this state unlimited general jurisdiction over all matters sounding either in law or equity) and Okla. Stat. tit. 12, §2004(F) (authorizing courts of this state to exercise jurisdiction on any basis consistent with the Constitutions of the United States and Oklahoma). The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

8. Personal jurisdiction is not in question for the Oklahoma based Defendant. For the out of state insurance company Defendant, personal jurisdiction is proper pursuant to the State of Oklahoma's long arm statute—Okla. Stat. tit. 12, §2004(F)—authorizing courts of this state to exercise jurisdiction on any basis consistent with the Constitutions of the United States and Oklahoma. Defendant Farmers by itself and/or through its agents systematically offer, sale, and provide insurance related services in the State of Oklahoma.

9. Venue is proper in Tulsa County pursuant to Okla. Stat. tit. 12, §187 as that provision provides that in cases where all of the defendants, like here, are non-residents of the State of Oklahoma, then the county in which one or more Oklahoma Plaintiffs reside – here Tulsa County—is where the action properly lies.

## **II. STATEMENT OF THE FACTS**

10. Plaintiff incorporates all the preceding paragraphs as though stated *verbatim* below.

11. Plaintiffs had insured their home in Tulsa, Tulsa County, Oklahoma with Defendant and had a homeowner's insurance policy underwritten by Defendants.

12. On or about October, 2015, Plaintiffs' home suffered wind and subsequent roof damage.

13. Plaintiffs promptly presented their claim to Defendant, USAA, for processing.

14. Defendant acknowledged receipt of the claim. However, since the date of loss in October, 2015 to present and continuing, Defendant has unreasonably, and in bad faith, refused to pay the proper amount for a valid claim under an insurance policy issued by it.

15. As a result of Defendants' conduct, Plaintiffs have suffered damages as alleged herein.

### **CAUSE (S) OF ACTION**

#### **I. BAD FAITH (Against USAA)**

16. Plaintiffs hereby incorporate all the preceding paragraphs as though stated *verbatim* below.

17. Pursuant to the terms of the insurance policy at issue in this case, Defendant was required to pay Plaintiffs' claim.

18. The insurer's failure to pay and/or refusal to pay was unreasonable under the circumstances of this case because, among other reasons, Defendant unreasonably delayed in investigating and processing the claim, without just cause, unduly and unreasonably failed to settle and pay in full a valid claim under the policy.

19. Defendant's failure to pay and/or refusal to pay had no reasonable basis and/or the amount offered to Plaintiffs was unreasonably low.

20. Defendant did not deal fairly and in good faith with Plaintiffs.

21. Defendant's violation of its duty of good faith and fair dealing was the direct and proximate cause of the injury sustained.

## **II. BREACH OF CONTRACT (Against USAA)**

22. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

23. Plaintiffs and Defendant had a contract of home insurance, whereby upon Plaintiffs timely presentment of validly covered claims, Defendant would within reasonable time investigate and pay the claims in full.

24. Defendant has, however, breached its contract with Plaintiffs in that even after being timely presented with validly covered claims, Defendant has failed within reasonable time to investigate and pay the claims in full.

25. Plaintiffs have suffered damages as a direct and proximate result of the breach.

## **III. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS (Against USAA)**

26. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

27. Defendant's conduct, as outlined herein, was so extreme and outrageous as to go beyond all possible bounds of decency and would be considered utterly intolerable in a civilized society.

28. Defendant intentionally and/or recklessly caused severe emotional distress to Plaintiff beyond which a reasonable person could be expected to endure.

29. Alternatively, as the natural and probable consequence of Defendant USAA committing a willful and intentional tortious act—insurance bad faith—Plaintiffs have suffered emotional distress.

30. Altogether, as a result of Defendant's conduct, Plaintiffs have suffered damage complained of herein.

#### **IV. NEGLIGENCE (Against T. Fulton)**

31. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

32. Based on information and belief, Defendant Fulton at all times relevant to this action was an independent professional that provided property appraisal and evaluation services for homeowner damage claims.

33. Defendant USAA retained Defendant Fulton to inspect and appraise Plaintiffs' home after the reported roof damage.

34. Defendant Fulton accepted the assignment and indeed came to Plaintiffs' home to evaluate and appraise the damage.

35. By accepting to carry out the evaluative assignment on Plaintiffs' home that would be used, among other things, to determine the nature, extent, and cause of damage to Plaintiffs' home, Defendant Fulton voluntarily assumed a duty of care to Plaintiffs.

36. In performing his professional duty, Fulton was negligent in that he departed from the professionally expected standards of care when he deliberately falsified his final

findings to report that the roof damage to Plaintiffs' home, although clearly caused by the wind, was somehow a result of a pre-existing condition to the home.

37. In doing so, Defendant Fulton breached his professional duties of care to Plaintiffs.

38. As a proximate result of Defendant Fulton's breach of duty of care, Plaintiffs have suffered damages as alleged herein.

**EXEMPLARY AND PUNITIVE DAMAGES  
(AS TO CLAIMS IN # I, III, IV)**

39. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

40. The acts and omissions by Defendant as set forth in the preceding paragraphs in this Petition demonstrate that Defendant was engaged in conduct and/or practices evincing malice and/or reckless indifference to Plaintiffs' rights.

41. As a direct result of Defendant's malice and/or reckless disregard for Plaintiffs' rights, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined at trial commensurate with the financial resources available to Defendant and sufficient to deter others similarly situated from like behavior.

42. In accordance with Okla. Stat. tit. 12 §19.1, Plaintiff has consulted with a qualified expert who has submitted an Affidavit, which is attached hereto as Exhibit "A".

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray the Court grant judgment in favor of Plaintiffs and against Defendant for the causes of action alleged herein in an amount in excess of \$75,000, exemplary and punitive damages, attorney's fees, costs, pre and post judgment interest, and for such further relief as the Court deems just and proper.

Respectfully submitted,

**RICHARDSON, RICHARDSON,  
BOUDREAUX**

A handwritten signature in black ink, appearing to read 'R. S. Allred', is written over a horizontal line.

Raymond S. Allred, OBA #11747  
Mbilike M. Mwafulirwa, OBA #31164  
7447 S. Lewis Ave.  
Tulsa, Oklahoma 74136  
(918) 492-7674 T  
(918) 493-192 F  
*Attorneys for Plaintiffs*



AFFIDAVIT OF MARK POLLACK

State of Arkansas )

)ss.

County of Pulaski )

1. I am an insurance adjuster licensed in the State of Oklahoma, My non-resident License Number is 74455.

2. I am familiar with the standards of conduct, rules, regulations and laws of an insurance adjuster/appraiser who operate in the state of Oklahoma during 2015.

3. I have reviewed records from Sue and Lance Hightower (Hightower), USAA Insurance Company (USAA), ALLCAT Appraisal Service's appraiser/adjuster Thomas Fulton (Fulton), Lawrence Forensic Engineering, and roofing inspection reports from Ronco Construction & Supply Co., Dun-Rite Roofing, Inc., Impact Roofing of Oklahoma, LLC, and 918 Construction.

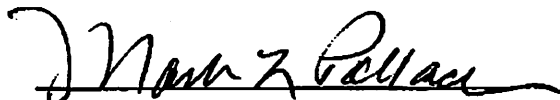
4. In October of 2015, Hightower's residence suffered damages as a result of a windstorm. Hightower submitted a claim to USAA, who in turn retained the services of Fulton to inspect the residence.

5. Fulton submitted information to USAA which lead to USAA only partially indemnifying Hightower for the damages caused by the windstorm. The information Fulton provided also lead to a declination of other damages by USAA that should have been paid

6. Hightower obtained the opinion of four firms in Oklahoma who are in the business of repairing and replacing roofs, all of whom submitted estimates to replace the entire roof on the Hightower residence.

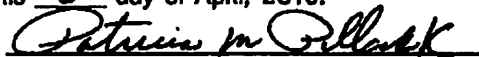
7. Fulton's behavior is not consistent with the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced insurance professional engaged in the activities as noted above in my opinion.

FURTHER AFFIANT SAYETH NOT.



Mark L. Pollack, CPCU, AIC, RPA, License 74455

Subscribed and sworn to before me this 6 day of April, 2016.



Notary





IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**

APR 25 2016

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

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SUE I. HIGHTOWER,

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Independent Appraiser,

Defendants.

Case No. CJ-2016-01412

Judge Jefferson D. Sellers

*Attorney Lien Claimed  
Jury Trial Demanded*

**AMENDED PETITION**

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2. Plaintiff Sue I. Hightower is a resident of Tulsa County, Tulsa, Oklahoma.
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4. Based on information and belief, Defendant Thomas A. Fulton is an Oklahoma citizen and independent appraiser who conducts business in Tulsa County. He appraised Plaintiffs' home on behalf of USAA Insurance Co., Inc.

5. Based upon information and belief, USAA Insurance Co., Inc., ("USAA") is a property and casualty insurance company organized under the laws of the State of Texas.

6. Based upon information and belief, USAA offers, sells, and provides insurance related services and products in the State of Oklahoma.

7. Subject matter jurisdiction is proper in the district courts of the State of Oklahoma pursuant to Okla. Const. art. 7, §7 (granting district courts of this state unlimited general jurisdiction over all matters sounding either in law or equity) and Okla. Stat. tit. 12, §2004(F) (authorizing courts of this state to exercise jurisdiction on any basis consistent with the Constitutions of the United States and Oklahoma). The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

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9. Venue is proper in Tulsa County pursuant to Okla. Stat. tit. 12, §187 as that provision provides that in cases where all of the defendants, like here, are non-residents of the State of Oklahoma, then the county in which one or more Oklahoma Plaintiffs reside – here Tulsa County—is where the action properly lies.

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15. As a result of Defendants' conduct, Plaintiffs have suffered damages as alleged herein.

### **CAUSE(S) OF ACTION**

#### **I. BAD FAITH (Against USAA)**

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18. The insurer's failure to pay and/or refusal to pay was unreasonable under the circumstances of this case because, among other reasons, Defendant unreasonably delayed in investigating and processing the claim, without just cause, unduly and unreasonably failed to settle and pay in full a valid claim under the policy.

19. Defendant's failure to pay and/or refusal to pay had no reasonable basis and/or the amount offered to Plaintiffs was unreasonably low.

20. Defendant did not deal fairly and in good faith with Plaintiffs.

21. Defendant's violation of its duty of good faith and fair dealing was the direct and proximate cause of the injury sustained.

**II. BREACH OF CONTRACT  
(Against USAA)**

22. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

23. Plaintiffs and Defendant had a contract of home insurance, whereby upon Plaintiffs timely presentment of validly covered claims, Defendant would within reasonable time investigate and pay the claims in full.

24. Defendant has, however, breached its contract with Plaintiffs in that even after being timely presented with validly covered claims, Defendant has failed within reasonable time to investigate and pay the claims in full.

25. Plaintiffs have suffered damages as a direct and proximate result of the breach.

**III. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
(Against USAA)**

26. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

27. Defendant's conduct, as outlined herein, was so extreme and outrageous as to go beyond all possible bounds of decency and would be considered utterly intolerable in a civilized society.

28. Defendant intentionally and/or recklessly caused severe emotional distress to Plaintiff beyond which a reasonable person could be expected to endure.

29. Alternatively, as the natural and probable consequence of Defendant USAA committing a willful and intentional tortious act—insurance bad faith—Plaintiffs have suffered emotional distress.

30. Altogether, as a result of Defendant's conduct, Plaintiffs have suffered damage complained of herein.

#### **IV. NEGLIGENCE (Against T. Fulton)**

31. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

32. Based on information and belief, Defendant Fulton at all times relevant to this action was an independent professional that provided property appraisal and evaluation services for homeowner damage claims.

33. Defendant USAA retained Defendant Fulton to inspect and appraise Plaintiffs' home after the reported roof damage.

34. Defendant Fulton accepted the assignment and indeed came to Plaintiffs' home to evaluate and appraise the damage.

35. By accepting to carry out the evaluative assignment on Plaintiffs' home that would be used, among other things, to determine the nature, extent, and cause of damage to Plaintiffs' home, Defendant Fulton voluntarily assumed a duty of care to Plaintiffs.

36. In performing his professional duty, Fulton was negligent in that he departed from the professionally expected standards of care when he deliberately falsified his final

findings to report that the roof damage to Plaintiffs' home, although clearly caused by the wind, was somehow a result of a pre-existing condition to the home.

37. In doing so, Defendant Fulton breached his professional duties of care to Plaintiffs.

38. As a proximate result of Defendant Fulton's breach of duty of care, Plaintiffs have suffered damages as alleged herein.

**EXEMPLARY AND PUNITIVE DAMAGES  
(AS TO CLAIMS IN # I, III, IV)**

39. Plaintiffs hereby incorporate all the preceding paragraphs, *supra*, as though stated *verbatim* below.

40. The acts and omissions by Defendant as set forth in the preceding paragraphs in this Petition demonstrate that Defendant was engaged in conduct and/or practices evincing malice and/or reckless indifference to Plaintiffs' rights.

41. As a direct result of Defendant's malice and/or reckless disregard for Plaintiffs' rights, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined at trial commensurate with the financial resources available to Defendant and sufficient to deter others similarly situated from like behavior.

42. In accordance with Okla. Stat. tit. 12 §19.1, Plaintiff has consulted with a qualified expert who has submitted an Affidavit, which is attached hereto as Exhibit "A".

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray the Court grant judgment in favor of Plaintiffs and against Defendant for the causes of action alleged herein in an amount in excess of \$75,000, exemplary and punitive damages, attorney's fees, costs, pre and post judgment interest, and for such further relief as the Court deems just and proper.

Respectfully submitted,

**RICHARDSON, RICHARDSON,  
BOUDREAUX**

A handwritten signature in black ink, appearing to read 'R. S. Allred', is written over a horizontal line.

Raymond S. Allred, OBA #11747  
Mbilike M. Mwafulirwa, OBA #31164  
7447 S. Lewis Ave.  
Tulsa, Oklahoma 74136  
(918) 492-7674 T  
(918) 493-192 F  
*Attorneys for Plaintiffs*



AFFIDAVIT OF MARK POLLACK

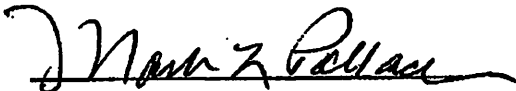
State of Arkansas )

)ss.

County of Pulaski )

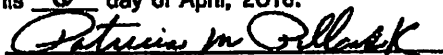
1. I am an insurance adjuster licensed in the State of Oklahoma, My non-resident License Number is 74455.
2. I am familiar with the standards of conduct, rules, regulations and laws of an insurance adjuster/appraiser who operate in the state of Oklahoma during 2015.
3. I have reviewed records from Sue and Lance Hightower (Hightower), USAA Insurance Company (USAA), ALLCAT Appraisal Service's appraiser/adjuster Thomas Fulton (Fulton), Lawrence Forensic Engineering, and roofing inspection reports from Ronco Construction & Supply Co., Dun-Rite Roofing, Inc., Impact Roofing of Oklahoma, LLC, and 918 Construction.
4. In October of 2015, Hightower's residence suffered damages as a result of a windstorm. Hightower submitted a claim to USAA, who in turn retained the services of Fulton to inspect the residence.
5. Fulton submitted information to USAA which lead to USAA only partially indemnifying Hightower for the damages caused by the windstorm. The information Fulton provided also lead to a declination of other damages by USAA that should have been paid
6. Hightower obtained the opinion of four firms in Oklahoma who are in the business of repairing and replacing roofs, all of whom submitted estimates to replace the entire roof on the Hightower residence.
7. Fulton's behavior is not consistent with the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced insurance professional engaged in the activities as noted above in my opinion.

FURTHER AFFIANT SAYETH NOT.



Mark L. Pollack, CPCU, AIC, RPA, License 74455

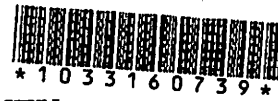
Subscribed and sworn to before me this 6 day of April, 2016.



Notary



PH



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

LANCE W. HIGHTOWER,  
SUE HIGHTOWER,  
  
v.  
  
Plaintiffs,  
  
USAA CASUALTY INSURANCE CO.;  
and THOMAS A. FULTON, Independent  
Appraiser,  
  
Defendants.

Case No. CJ-2016-01412  
Judge Sellers

**DISTRICT COURT  
FILED**

MAY - 4 2016

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

ORIGINAL SUMMONS

To the above-named Defendant: **USAA CASUALTY INSURANCE COMPANY**

You have been sued by the above-named Plaintiff(s), and you are directed to file a written Answer to the attached Petition in the court at the above address within **twenty (20) days** after service of this Summons upon you exclusive of the day of service. Within the same time, a copy of your Answer must be delivered or mailed to the Attorney for the Plaintiff(s). Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 13 day of 4 2016.

Court Clerk

By

Deputy Court Clerk

*[Handwritten Signature]*

(Seal)

This Summons and order was served on 4/29/16 - Certified mail  
(date of service)

Signature of person serving Summons

**YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMITED STATED IN THIS SUMMONS.**

Return **ORIGINAL** for filing.

2016 MAY -4 PM 1:05  
SALLY HOWE SMITH  
COURT CLERK

**Exhibit 3**

P

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA**

LANCE W. HIGHTOWER,	)	
SUE HIGHTOWER,	)	
	)	
v.	)	
	)	
Plaintiffs,	)	Case No. CJ-2016-01412
	)	Judge Sellers
USAA CASUALTY INSURANCE CO.;	)	
and THOMAS A. FULTON, Independent	)	
Appraiser,	)	
	)	
Defendants.	)	

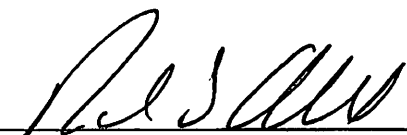
**AFFIDAVIT AND RETURN OF SERVICE BY CERTIFIED MAIL**

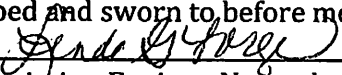
STATE OF OKLAHOMA     )  
  )ss.  
COUNTY OF TULSA        )

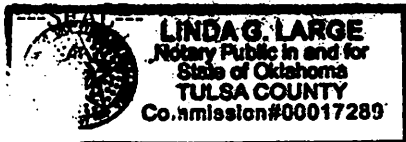
I, **Raymond S. Allred**, of lawful age, being first duly sworn, on oath state that on the 29<sup>th</sup> day of April, 2016, I served via Certified Mail, Return Receipt Requested, Receipt Number 7012 3460 0002 7435 4758, from the City of Tulsa, Oklahoma, the attached *Amended Petition*, in the above-entitled and numbered action to the following person to-wit:

USAA Casualty Insurance Co.  
c/o Insurance Commissioner  
State of Oklahoma  
Five Corporation Plaza  
3625 NW 56<sup>th</sup> Street  
#100  
Oklahoma City, OK 73112-4511

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
**Raymond S. Allred, OBA #11747**

Subscribed and sworn to before me this 3<sup>rd</sup> day of May, 2016.  
Notary:  Linda G. Large  
My Commission Expires: November 1, 2016



**PS Form 3811, July 2015 PSN 7530-02-000-9053**

**Domestic Return Receipt**

2. Article Number (Transfer from service label)  
7012 3460 0002 7435 4758

9590 9402 1315 5285 7824 16

INSURANCE Commissioner  
State of Oklahoma  
Five Corporate Plaza  
3625 Northwest St, #100  
Oklahoma City, OK 73124-5111

1. Article Addressed to:  
or on the front if space permits.  
■ Attach this card to the back of the mailpiece, so that we can return the card to you.  
■ Print your name and address on the reverse  
■ Complete items 1, 2, and 3.

**SENDER: COMPLETE THIS SECTION**

3. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☐ Certified Mail®  
☒ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Priority Mail Express®  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Restricted Delivery  
☐ Restricted Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

**RECEIVED**  
APR 27 2016  
OKLAHOMA INSURANCE DEPARTMENT  
MAIL ROOM

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature \_\_\_\_\_  
☐ Agent  
☐ Addressee  
☒ Addressee (Print Name)  
 B. Date of Delivery: APR 28 2016

**U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)  
**OFFICIAL USE**

Sent To: INSURANCE Commissioner  
 State of Oklahoma  
 Five Corp. Plaza, 3625 Northwest  
 City, State, ZIP: Oklahoma City, OK 73124-5111  
 PS Form 3800, April 2013

Postage \$  
 Certified Fee \$  
 Return Receipt Fee (Endorsement Required)  
 Restricted Delivery Fee (Endorsement Required)  
 Total Postage & Fees \$

4/26/16  
 Source  
 USAA  
 Here  
 Mark

GOVERNOR  
MARY FALLIN

INSURANCE COMMISSIONER  
JOHN D. DOAK



INSURANCE COMMISSIONER  
State of Oklahoma

April 28, 2016

CERTIFIED MAIL NO:  
7015 3010 0001 4736 5092

**COPY**

USAA CASUALTY INSURANCE COMPANY  
9800 FREDERICKSBURG ROAD, D-3-W  
SAN ANTONIO TX 78288

RE: CJ1601412  
In the District Court in TULSA  
State of Oklahoma  
LANCE W. HIGHTOWER, SUE HIGHTOWER  
vs  
USAA CASUALTY INSURANCE COMPANY

RECEIVED MAY 02 2016

Dear Sir or Madam:

Enclosed is a copy of the above captioned summons  
served on the Insurance Commissioner as designated agent  
for service of process of foreign insurance companies doing  
business in the State of Oklahoma (36 O.S. section 621(B)).

Sincerely,

JOHN DOAK  
Insurance Commissioner

A handwritten signature in cursive script, appearing to read "Maria Torres".

Maria Torres

Legal Department

dp/enclosure

THE CORPORATION COMPANY  
1833 SOUTH MORGAN ROAD  
OKLAHOMA CITY OK 73128

CERTIFIED MAIL NO:  
7015 3010 0001 4736 5108



**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA**

LANCE W. HIGHTOWER,  
SUE HIGHTOWER,

v.

Plaintiffs,

USAA CASUALTY INSURANCE CO.;  
and THOMAS A. FULTON, Independent  
Appraiser,

Defendants.

Case No. CJ-2016-01412  
Judge Sellers

**DISTRICT COURT  
FILED**

MAY -4 2016

**ORIGINAL SUMMONS**

To the above-named Defendant:

Thomas Fulton, Independent Appraiser

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

You have been sued by the above-named Plaintiff(s), and you are directed to file a written Answer to the attached Petition in the court at the above address within **twenty (20) days** after service of this Summons upon you exclusive of the day of service. Within the same time, a copy of your Answer must be delivered or mailed to the Attorney for the Plaintiff(s). Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 13 day of 4 2016.

Court Clerk

By

Deputy Court Clerk

(Seal)

This Summons and order was served on

4/29/16 - certified mail  
(date of service)

Signature of person serving Summons

**YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED  
WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED  
IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMITED  
STATED IN THIS SUMMONS.**

Return ORIGINAL for filing.

**Exhibit 4**

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA**

LANCE W. HIGHTOWER,	)	
SUE HIGHTOWER,	)	
	)	
v.	)	
	)	
Plaintiffs,	)	Case No. CJ-2016-01412
	)	Judge Sellers
USAA CASUALTY INSURANCE CO.;	)	
and THOMAS A. FULTON, Independent	)	
Appraiser,	)	
	)	
Defendants.	)	

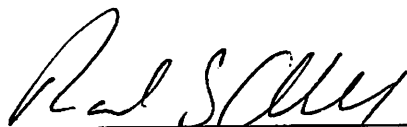
**AFFIDAVIT AND RETURN OF SERVICE BY CERTIFIED MAIL**


STATE OF OKLAHOMA     )  
                                      )ss.  
COUNTY OF TULSA        )

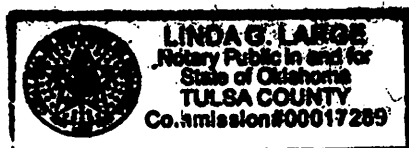
I, **Raymond S. Allred**, of lawful age, being first duly sworn, on oath state that on the 29<sup>th</sup> day of April, 2016, I served via Certified Mail, Return Receipt Requested, Receipt Number 7015 1529 9993 4172 7618, from the City of Tulsa, Oklahoma, the attached *Amended Petition*, in the above-entitled and numbered action to the following person to-wit:

Thomas Fulton  
12503 S. Birch Avenue  
Jenks, OK 74037

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Raymond S. Allred, OBA #11747

Subscribed and sworn to before me this 3<sup>rd</sup> day of May, 2016.  
Notary: , Linda G. Large  
My Commission Expires: November 1, 2016  
---SEAL---





**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☒ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$

Sent To *Thomas fulton*

Street and Apt. No., or PO Box No. *12503 S Birch Ave*

City, State, ZIP+4® *Jenks OK 74037*

Postmark Here *4/26/16 amended*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**COMPLETE THIS SECTION**

Items 1, 2, and 3.  
 Name and address on the reverse  
 can return the card to you.  
 Attach this card to the back of the mailpiece,  
 front if space permits.  
 Addressed to:

*Thomas fulton*  
*12503 S Birch Ave*  
*Jenks, OK 74037*



9402 1315 5285 7823 48

When (Transfer from service label)

65 1520 0003 4172 7618

11, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Patricia Fulton*☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

**3. Service Type**☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



OCIS Case Summary for CJ-2016-1412- HIGHTOWER, LANCE W v. USAA CASUAL... Page 1 of 4


[Home](#) [Courts](#) [Court Dockets](#) [Legal Research](#) [Calendar](#) [Help](#)

The information on this page is NOT an official record. Do not rely on the correctness or completeness of this information. Verify all information with the official record keeper. The information contained in this report is provided in compliance with the Oklahoma Open Records Act, [51 O.S. 24A.1](#). Use of this information is governed by this act, as well as other applicable state and federal laws.

### IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

LANCE W HIGHTOWER, Plaintiff, and SUE I HIGHTOWER, Plaintiff, v. USAA CASUALTY INSURANCE CO, Defendant, and THOMAS A FULTON, Defendant.	No. CJ-2016-1412 (Civil relief more than \$10,000: BREACH OF AGREEMENT - CONTRACT)  Filed: 04/12/2016  Judge: Sellers, Jefferson D.
---	---

### Parties

FULTON, THOMAS A , Defendant  
 HIGHTOWER, LANCE W , Plaintiff  
 HIGHTOWER, SUE I , Plaintiff  
 USAA CASUALTY INSURANCE CO , Defendant

### Attorneys

#### Attorney

ALLRED, RAYMOND S(Bar # 11747)  
 7447 S LEWIS AVE  
 TULSA, OK 74136

#### Represented Parties

HIGHTOWER, LANCE W  
 HIGHTOWER, SUE I

### Events

Event	Party	Docket	Reporter
-------	-------	--------	----------

### Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

**Exhibit 5**

## OCIS Case Summary for CJ-2016-1412- HIGHTOWER, LANCE W v. USAA CASUAL... Page 2 of 4

## Issue # 1.

Issue: BREACH OF AGREEMENT - CONTRACT  
(CONTRACT)

Filed by: HIGHTOWER, LANCE W

Filed Date: 04/12/2016

Party Name:Disposition Information:Defendant: USAA CASUALTY  
INSURANCE CO

Pending.

Defendant: FULTON, THOMAS A

Pending.

## Issue # 2.

Issue: BREACH OF AGREEMENT - CONTRACT  
(CONTRACT)

Filed by: HIGHTOWER, SUE I

Filed Date: 04/12/2016


Party Name:Disposition Information:Defendant: USAA CASUALTY  
INSURANCE CO

Pending.

Defendant: FULTON, THOMAS A

Pending.

## Docket

Date	Code	Count	Party	Serial #	Entry Date		
04-12-2016	TEXT	1		97279994	Apr 12 2016 4:06:08:840PM	-	\$ 0.00
	CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.						
04-12-2016	CONTRACT	-		97279997	Apr 12 2016 4:06:08:930PM	Realized	\$ 0.00
	BREACH OF AGREEMENT - CONTRACT						
04-12-2016	DMFE	-		97279998	Apr 12 2016 4:06:08:940PM	Realized	\$ 2.00
	DISPUTE MEDIATION FEE(\$ 2.00)						
04-12-2016	PFE1	-		97279999	Apr 12 2016 4:12:46:010PM	Realized	\$ 163.00
	PETITION(\$ 163.00)						
	 <a href="#">Document Available (#1032761688)</a>						
04-12-2016	PFE7	-		97280000	Apr 12 2016 4:06:08:940PM	Realized	\$ 6.00
	LAW LIBRARY FEE(\$ 6.00)						
04-12-2016	OCISR	-		97280001	Apr 12 2016 4:06:08:940PM	Realized	\$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
04-12-2016	OCJC	-		97280002	Apr 12 2016 4:06:08:940PM	Realized	\$ 1.55
	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 1.55)						
04-12-2016	OCASA	-		97280003	Apr 12 2016 4:06:08:940PM	Realized	\$ 5.00
	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)						

## OCIS Case Summary for CJ-2016-1412- HIGHTOWER, LANCE W v. USAA CASUAL... Page 3 of 4

<b>Date</b>	<b>Code</b>	<b>Count</b>	<b>Party</b>	<b>Serial #</b>	<b>Entry Date</b>		
04-12-2016	SSFCHSCPC	-		97280004	Apr 12 2016 4:06:08:940PM	Realized	\$ 0.00
	SHERIFF'S SERVICE FEE FOR COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER						
04-12-2016	CCADMINCSF	-		97280005	Apr 12 2016 4:06:08:940PM	Realized	\$ 0.00
	COURT CLERK ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER						
04-12-2016	CCADMIN0155	-		97280006	Apr 12 2016 4:06:08:940PM	Realized	\$ 0.16
	COURT CLERK ADMINISTRATIVE FEE ON \$1.55 COLLECTION(\$ 0.16)						
04-12-2016	SJFIS	-		97280007	Apr 12 2016 4:06:08:940PM	Realized	\$ 0.45
	STATE JUDICIAL REVOLVING FUND - INTERPRETER AND TRANSLATOR SERVICES(\$ 0.45)						
04-12-2016	CCADMIN04	-		97280008	Apr 12 2016 4:06:08:940PM	Realized	\$ 0.50
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)						
04-12-2016	LTF	-		97280009	Apr 12 2016 4:06:09:100PM	Realized	\$ 10.00
	LENGTHY TRIAL FUND(\$ 10.00)						
04-12-2016	TEXT	-		97279995	Apr 12 2016 4:06:08:860PM	-	\$ 0.00
	OCIS HAS AUTOMATICALLY ASSIGNED JUDGE SELLERS, JEFFERSON D. TO THIS CASE.						
04-12-2016	ACCOUNT	-		97280027	Apr 12 2016 4:07:11:950PM	-	\$ 0.00
	RECEIPT # 2016-3309100 ON 04/12/2016. PAYOR:RICHARDSON RICHARDSON TOTAL AMOUNT PAID: \$213.66. LINE ITEMS: CJ-2016-1412: \$163.00 ON AC01 CLERK FEES. CJ-2016-1412: \$6.00 ON AC23 LAW LIBRARY FEE. CJ-2016-1412: \$0.66 ON AC31 COURT CLERK REVOLVING FUND. CJ-2016-1412: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES. CJ-2016-1412: \$1.55 ON AC59 COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND. CJ-2016-1412: \$2.00 ON AC64 DISPUTE MEDIATION FEES. CJ-2016-1412: \$0.45 ON AC65 STATE JUDICIAL REVOLVING FUND, INTERPRETER SVCS. CJ-2016-1412: \$25.00 ON AC79 OCIS REVOLVING FUND. CJ-2016-1412: \$10.00 ON AC81 LENGTHY TRIAL FUND.						
04-13-2016	SMF	-		97296285	Apr 13 2016 4:24:24:913PM	Realized	\$ 10.00
	SUMMONS FEE-2(\$ 10.00)						
04-13-2016	SMIMA	-		97296272	Apr 13 2016 4:24:40:133PM	-	\$ 0.00
	SUMMONS ISSUED - MAILED BY ATTORNEY-2						
04-13-2016	ACCOUNT	-		97296297	Apr 13 2016 4:25:15:123PM	-	\$ 0.00
	RECEIPT # 2016-3309905 ON 04/13/2016. PAYOR:RICHARDSON RICHARDSON TOTAL AMOUNT PAID: \$10.00. LINE ITEMS: CJ-2016-1412: \$10.00 ON AC01 CLERK FEES.						

OCIS Case Summary for CJ-2016-1412- HIGHTOWER, LANCE W v. USAA CASUAL... Page 4 of 4

Date	Code	Count	Party	Serial #	Entry Date		
04-25-2016	AMP	-	HIGHTOWER, LANCE W	97421452	Apr 26 2016 9:03:57:993AM	-	\$ 0.00
AMENDED PETITION							
 <a href="#">Document Available (#1033117391)</a>							
05-04-2016	S	-	USAA CASUALTY INSURANCE CO	97525376	May 5 2016 9:11:59:723AM	-	\$ 0.00
PARTY HAS BEEN SUCCESSFULLY SERVED. USAA CASUALTY INSURANCE COMPANY SERVED / CERT MAIL / STAMPED RECEIVED BY OK INSURANCE DEPT / DEL ON 4-27-16							
 <a href="#">Document Available (#1033160739)</a>							
05-04-2016	S	-	FULTON, THOMAS A	97525407	May 5 2016 9:12:43:893AM	-	\$ 0.00
PARTY HAS BEEN SUCCESSFULLY SERVED. THOMAS FULTON SERVED / CERT MAIL / SIGNED BY PATRICIA FULTON / NO DEL DATE							
 <a href="#">Document Available (#1033160735)</a>							

Report Generated by The Oklahoma Court Information System at May 16, 2016 9:23 AM

End of Transmission.





## HOMEOWNERS POLICY PACKET

EFFECTIVE: 09-27-14 TO: 09-27-15

SUSAN I HIGHTOWER  
4811 S 192ND EAST AVE  
TULSA OK 74134-7218

CIC 01129 99 95 93A

### IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

- 1) USAA considers many factors when determining your premium. Maintaining your property to reduce the probability of loss is one of the most important steps you can take toward reducing premium increases. A history of claim activity will affect your policy premium.
- 2) Go to [usaa.com](http://usaa.com) to view policy coverages and home features.
- 3) Your policy does NOT cover loss due to flood from any source. For information about obtaining flood coverage from the National Flood Insurance Program (NFIP), call USAA at (800) 531-8722, or contact the NFIP directly.

If you already have a flood policy, you should review it to make sure you have the appropriate coverage and limits. No automatic increases or adjustments are applied to your policy. Coverage for loss of household contents due to flood may be available at an additional cost. If you have questions, please call a member service representative at the phone number above.

This is not a bill. Any premium charge or return for this policy will be reflected on your next regular monthly statement.

To receive this document and others electronically or view your policy summary online, go to [usaa.com](http://usaa.com).

For U.S. Calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

HOCS1

49709-0406

**Exhibit 6**

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**USAA CASUALTY INSURANCE COMPANY**  
**9800 Fredericksburg Road - San Antonio, Texas 78288**  
**RENEWAL DECLARATIONS PAGE**

PAGE 3  
MAIL-GENR-I

Named Insured and Residence Premises

Policy Number

SUSAN I HIGHTOWER AND LANCE W HIGHTOWER

CIC 01129 99 95 93A

4811 S 192ND EAST AVE  
TULSA, TULSA, OK 74134-7218

Policy Period From: 09/27/14 To: 09/27/15  
 (12:01 A.M. standard time at location of the residence premises)

<b>SECTION I - COVERAGES AND AMOUNTS OF INSURANCE</b>	
COVERAGE A - DWELLING PROTECTION	\$199,000
COVERAGE B - OTHER STRUCTURES PROTECTION	\$49,750
COVERAGE C - PERSONAL PROPERTY PROTECTION	\$149,250
COVERAGE D - LOSS OF USE PROTECTION (UP TO 12 MONTHS)	UNLIMITED
<b>SECTION II - COVERAGES AND LIMITS OF LIABILITY</b>	
Personal Liability - Each Occurrence	\$300,000
Medical Payments to Others	\$5,000
<b>DEDUCTIBLES (Applies to SECTION I Coverages ONLY)</b>	
We cover only that part of the loss over the deductible stated.	
WIND AND HAIL	\$1,990 (1%)
ALL OTHER PERILS	\$1,000
<b>POLICY PREMIUM for Section I and Section II Coverages Above</b>	<b>\$1,158.19</b>
<b>CREDITS AND DISCOUNTS</b> (Included in policy premium above.)	\$1,000.93 CR
Details on the following page. (If applicable)	
<b>OTHER COVERAGES AND ENDORSEMENTS</b>	<b>\$130.67</b>
Forms and Endorsements are printed on the following page.	
<b>STATE SURCHARGES AND TAXES</b> (Shown below if applicable)	
<b>TOTAL POLICY PREMIUM</b>	
Including Credits, Discounts, Optional Coverages, Endorsements, State Surcharges and Taxes	
	<b>\$1,288.86</b>
<b>PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL. STATEMENT TO FOLLOW.</b>	

**FIRST MORTGAGEE:**

PHH MORTGAGE SERVICES  
(DEPT 8722)

LOAN NR 0045658184

ISA/ATIMA, ATTN: INSURANCE DEPT  
PO BOX 5954, SPRINGFIELD, OH 45501-5954

In witness whereof, this policy is signed on 07/28/14

Steven Alan Bennett, Secretary

Kevin Bergner, President

**REFER TO YOUR POLICY FOR OTHER COVERAGES, LIMITS AND EXCLUSIONS.**

HO-D1 (07-08)

ATTACH THIS DECLARATION TO PREVIOUS POLICY

87028-0708



USAA CASUALTY INSURANCE COMPANY  
RENEWAL DECLARATIONS PAGE

	<b>Policy Number</b>		<b>Policy Term:</b>	<b>09/27/14</b>	<b>09/27/15</b>
<b>CIC</b>	<b>01129 99 95</b>	<b>93A</b>	<b>Inception</b>		<b>Expiration</b>

POLICY AND ENDORSEMENTS THAT ARE PART OF YOUR CONTRACT WITH US.

REMAIN IN EFFECT (Refer to prior Policy Packet(s) for documents not attached.):

QR9CIC	(07-08)	QUICK REFERENCE-PREFERRED PROTECTION
H0-9R (02)	(07-08)	PREFERRED PROTECTION PLAN
H0-ACP	(07-12)	AMENDMENT TO CONTRACT PROVISIONS
H0-OK	(07-08)	OKLAHOMA SPECIAL PROVISIONS
H0SL9 (02)	(07-08)	SPECIAL LOSS SETTLEMENT
H0-208	(07-12)	WATER BACKUP OR SUMP PUMP OVERFLOW

ADDED:

H0-370	(07-08)	EARTHQUAKE	\$130.67
--------	---------	------------	----------

YOUR PREMIUM HAS BEEN REDUCED BY THE FOLLOWING CREDITS AND DISCOUNTS:

AUTO AND HOME COMBINATION DISCOUNT	\$143.21 CR
CLAIMS FREE DISCOUNT	\$143.21 CR
HOME AGE DISCOUNT	\$714.51 CR



CIC 01129 99 95 PAGE 5  
93A

HO-370 (07-08)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **EARTHQUAKE**

For an additional premium, we insure for direct physical loss to property covered under SECTION I-PROPERTY WE COVER of the policy to which this endorsement is attached caused by earthquake including land shock waves or tremors before, during or after a volcanic eruption.

One or more earthquake shocks that occur within a seventy-two hour period shall constitute a single earthquake.

The amounts of insurance for earthquake coverage are the same as the amounts of insurance applying to SECTION I-PROPERTY WE COVER in the policy to which this endorsement is attached.

#### **DEDUCTIBLE**

The following deductible provision applies to any loss covered by this endorsement and, in that respect replaces any deductible provision in the policy to which this endorsement is attached:

We will pay only that part of the loss which exceeds 10 % of the amount of insurance for Coverage A - DWELLING.

This deductible will apply separately to each single earthquake.

If any other endorsement attached to this policy allows you to make claim for an additional amount above the amount of insurance shown on the policy Declarations, the combined total will be used to calculate the deductible amount.

This deductible does not apply to Coverage D Loss of Use Protection.

#### **SPECIAL EXCLUSION**

We do not cover loss resulting directly or indirectly from flood of any nature or tidal wave, whether caused by, resulting from, contributed to or aggravated by earthquake.

Except as specifically modified in this endorsement, all provisions to the policy to which this endorsement is attached also apply to this endorsement.

**Term Premium** \$130.67

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HO-370 (07-08)

87048-0708  
Page 1 of 1

### WORKERS' COMPENSATION NOTICE

Most states now require employers to carry Workers' Compensation coverage for their employees. In a number of states this coverage applies to household workers, gardeners and even baby-sitters. The employer usually becomes liable to the employee for the protection after the employee has earned a certain minimum salary or worked a certain minimum number of hours per week/per quarter. You should consult the appropriate agency below for the requirements in your state.

We do not write Workers' Compensation in your state. Your current policy does not provide Medical Payments or Liability coverage for injury to an employee who is or is supposed to be covered by Workers' Compensation. This should not alarm you, however, since Workers' Compensation coverage can be obtained separately from another company or agency. Contact the department listed below for guidance in purchasing your Workers' Compensation coverage.

**REMEMBER**, you do not have to give up your present insurance with us in order to purchase Workers' Compensation coverage from another source.

#### **ALASKA**

Workmen's Compensation Division  
Department of Labor  
P.O. Box 25512  
Juneau, AK 99802-5512

#### **HAWAII**

Disability Compensation Division  
Department of Labor and Industrial Relations  
P.O. Box 3769  
Honolulu, HI 96812

#### **COLORADO**

Workers' Compensation Section  
Division of Labor  
1120 Lincoln St., 14th Floor  
Denver, CO 80203

#### **IOWA**

Division of Industrial Services, Department of  
Employment Services  
1000 E. Grand Avenue  
Des Moines, IA 50319

#### **CONNECTICUT**

Workers' Compensation Commission  
1890 Dixwell Avenue  
Hamden, CT 06514

#### **KANSAS**

Division of Workers' Compensation  
Department of Human Resources  
600 Merchants Bank Tower  
800 SW Jackson  
Topeka, KS 66612-1227

#### **DELAWARE**

Industrial Accident Board  
State Office Building, 6th Floor  
820 North French Street  
Wilmington, DE 19801

#### **KENTUCKY**

Department of Workers' Claims  
Perimeter Park West  
1270 Louisville Rd, Building C  
Frankfort, KY 40601

#### **DISTRICT OF COLUMBIA**

DC Department of Employment Services  
Labor Standards Bureau  
Office of Workers' Compensation  
64 New York Avenue, NE, 2nd floor  
Washington, DC 20002

**MARYLAND**

Workers' Compensation Commission  
6 North Liberty Street  
Baltimore, MD 21201

**OHIO**

Workers' Compensation Board  
30 West Spring Street  
Columbus, OH 43266-0581

**MASSACHUSETTS**

Department of Industrial Accidents  
600 Washington St, 7th Floor  
Boston, MA 02111

**OKLAHOMA**

Oklahoma Workers' Compensation Court  
1915 N. Stiles  
Oklahoma City, OK 73105

**MICHIGAN**

Bureau of Workers' Disability Compensation  
Department of Labor  
P.O. Box 30016  
201 North Washington Square  
Lansing, MI 48909

**SOUTH CAROLINA**

Workers' Compensation Commission  
1612 Marion St.  
P.O. Box 1715  
Columbia, SC 29202

**MINNESOTA\***

Workers' Compensation Division  
Department of Labor and Industry  
443 Lafayette Road  
St. Paul, MN. 55155

**SOUTH DAKOTA**

Division of Labor and Management  
Department of Labor  
Kneip Building, Third Floor  
700 Governors Drive  
Pierre, SD 57501-2277

**UTAH**

Industrial Commission  
160 East 300 South  
Salt Lake City, UT 84111

- \* BE ADVISED that your policy only applies to injuries received by employees excluded from coverage by the Workers' Compensation statutes under Minn. Stat. 176.041, Subd. 1. You may be liable for any claims or expenses occurring outside of the Coverage of this policy. As an employer you may be subject to liability for lost wages, medical payments, rehabilitation for work related injuries, as well as additional amounts in penalties if workers' compensation coverage is required and no policy has been obtained. Also you may be penalized up to \$1,000 per week per employee for any period of non-insurance pursuant to Minn. Stat. 176.181, Subd. 3.

### **Your Home Characteristics**

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you're adequately covered in the event of a loss. We can calculate the minimum rebuilding cost of your home based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

On the back of this page, you'll find your home characteristics. If any of the information is incorrect, the rebuilding cost may be affected, so please revise any inaccuracies by:

- Logging on to [usaa.com](http://usaa.com), selecting your policy and then Home Characteristics, or
- Calling us at 1-800-531-USAA (8722).

#### **Should I adjust the coverage on my flood or wind policy?**

If you have a separate flood or wind policy for this property, please call your agent or insurer to confirm that your coverage is adequate. For flood or wind policies serviced by the USAA Insurance Agency, please call 1-800-531-8444 for flood policies or 1-800-531-8883 for wind policies. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas and Mississippi.

CIC 01129 99 95 LAST PAGE 9  
93A

**Your Home Characteristics**

YEAR BUILT: 2007

STORIES: 1.0

\*SQUARE FEET: 1818

\*Total Square Footage: Includes garage square footage if there is living space that is heated or cooled above the garage. It does not include a finished basement or attic.

FOUNDATION(S) : SLAB

EXTERIOR WALL: BRICK OVER FRAME

VINYL SIDING

ROOF COVERING: ASPHALT/FIBERGLASS SHINGLE

YEAR ROOF INSTALLED: 2007

GARAGE TYPE: ATTACHED GARAGE - 2 CAR

INTERIOR WALL PARTITIONS: DRYWALL

INTERIOR WALL COVERINGS: PAINT

FLOOR COVERINGS: CARPET (STANDARD) WALL TO WALL

CERAMIC TILE

KITCHEN: 1 STANDARD

BATHROOMS: 1 STANDARD; 1 CUSTOM

FIREPLACE: NONE

HEAT & AIR: HEATING - GAS

CENTRAL AIR CONDITIONING - SAME DUCT

WIRED FOR CENTRAL ALARM: NO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) LANCE W. HIGHTOWER and  
(2) SUE I. HIGHTOWER,

Plaintiffs,

v.

Case No. \_\_\_\_\_

(1) USAA CASUALTY INSURANCE  
CO. and  
(2) THOMAS A. FULTON, Independent  
Appraiser,

*Removed from the District Court of  
Tulsa County, State of Oklahoma,  
Case No. CJ-2016-01412*

Defendants.

**DECLARATION OF JODI W. DISHMAN**

I, Jodi W. Dishman, declare as follows based on personal knowledge:

1. I am an attorney with McAfee & Taft and am one of the attorneys for Defendant USAA Casualty Insurance Company ("USAA CIC") in the above-entitled cause of action.
2. I am familiar with USAA CIC through my representation of USAA CIC.
3. USAA CIC is a corporation incorporated in Texas with its principal place of business in San Antonio, Texas.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 16th day of May, 2016.

s/ Jodi W. Dishman

Jodi W. Dishman, OBA # 20677  
McAfee & Taft A Professional Corporation  
211 North Robinson, 10<sup>th</sup> Floor  
Oklahoma City, OK 73102  
Telephone: (405) 235-9621  
Facsimile: (405) 235-0439  
E-mail: jodi.dishman@mcafeetaft.com

ATTORNEY FOR DEFENDANT USAA  
CASUALTY INSURANCE COMPANY

NAIC HOME | CIPR | NEWSROOM | ABOUT | CONTACTS | HELP




STATES &amp; JURISDICTION MAP

COMMITTEES &amp; ACTIVITIES

MARKETS/INVESTMENT ANALYSIS

MEMBERS &amp; REGULATORS

## Consumer Information Source

COMPANY SEARCH

HOW TO FILE A COMPLAINT

HELP

## Company Search Results:

Your search matched the companies displayed below. **Please be aware that an insurance company may have different subsidiaries with different names. Please check your policy for the correct name.** Click the links in the 'Available Information' to view closed consumer complaints, financial information and/or insurance writing information for a company. Click [here](#) to contact us if you were unable to find a company using the CIS Company Search.

[Company Search Help](#)

## Available Information

Company: [USAA Cas Ins Co](#)

Business Type: Property and Casualty

Home Office: TX

NAIC#: 25968

[Closed Complaints](#)
[Licensing](#)
[Financial Information](#)

All of the search results have been returned.

## Company Search for Complaint and Financial Information

## Company Name or Company Code

\*

## Business Type:


Global Receivership  
Information Database

GRID is a voluntary database provided by the state insurance departments to report information on insurer receiverships for consumers, claimants, and guaranty funds.

eapps.prod.03



HOME | CAREERS | STAFFNET | CONTACTS | HELP | LINK AGREEMENT | COPYRIGHT &amp; REPRINTS | PRIVACY | SITE MAP

NAIC PROGRAMS AND AFFILIATES: INSURE U | NIPR | SERFF | SBS | IIPRC

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Exhibit 8